

Before the  
Administrative Hearing Commission  
State of Missouri



CAR WASH PRODUCTS & SERVICE INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 10-1259 RS
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

**DECISION**

Car Wash Products & Service Inc. (“Car Wash”) is liable for sales tax and use tax as assessed by the Director of Revenue (“Director”) for Quarter 3, 2006 (\$12,199.73); Quarter 4, 2006 (\$2,739.11); Quarter 2, 2007 (\$20,765.90); Quarter 3, 2007 (\$5,498.62); Quarter 2, 2008 (\$7,347.29); Quarter 3, 2008 (\$7,265.40); September 2008 (\$1,058.95); and Quarter 1, 2009 (\$2,346.66), plus statutory interest and additions.

**Procedure**

On July 6, 2010, Car Wash filed a complaint appealing the final decision of the Director assessing underpayments in use tax and sales tax. On July 30, 2010, the Director filed his answer.

On October 17, 2012, this Commission convened a hearing on the complaint. Christopher Kehr of Kent, Kehr & Associates, represented Car Wash. Christopher Fehr and Spencer Martin represented the Director.

The matter became ready for our decision on January 30, 2013, when Car Wash filed its written argument. Along with its written argument, Car Wash filed a motion to file its written argument out of time. We grant that motion.

### **Findings of Fact**

1. At all relevant times, Car Wash was a Missouri corporation whose primary purpose was the sale, service, installation, and repair of car wash-related products, equipment, and supplies (“materials”). These materials were purchased by retail car wash businesses.

2. Car Wash collected and remitted sales tax, or paid use tax, on the materials it purchased or sold. It did not collect and remit sales tax, or pay use tax, on items it considered to be exempt. Sales tax returns were filed monthly, and use tax returns were filed quarterly.

3. On May 14, 2009, the Director opened an audit of Car Wash’s sales tax and use tax returns. Sales tax returns were reviewed from April 1, 2006 through March 31, 2009. Use tax returns were examined from January 1, 2006 through March 31, 2009. This audit ended on March 22, 2010.

4. During the audit, Car Wash was represented by Don Guenther, Owner and President, and Karen McCollum, CPA. The Director was represented by Ray Downey, auditor.

5. During the audit, Car Wash presented purchase invoices and credit card receipts for the periods covered under the audit. However, the Director requested, and Car Wash failed to provide: documentation as to whether some materials were for re-sale through a leasing arrangement; proof for out-of-state sales; and sales tax exemption certificates from in-state customers.

6. From the information provided, the Director held taxable all items consumed by Car Wash as the final consumer.

7. On May 21, 2010, based on the audit, the Director assessed the following amounts to Car Wash:<sup>1</sup>

PERIOD	TYPE OF TAX	AMOUNT	ADDITIONS	INTEREST
Quarter 3, 2006	Use	\$12,199.73	\$609.99	\$2,061.02
Quarter 4, 2006	Use	\$2,739.11	\$136.96	\$141.18
Quarter 2, 2007	Use	\$20,765.90	\$1,038.30	\$2,466.88
Quarter 3, 2007	Use	\$5,498.62	0	\$347.15
Quarter 2, 2008	Use	\$7,347.29	0	\$119.77
Quarter 3, 2008	Use	\$7,265.40	0	\$325.10
September 2008	Sales	\$1,058.95	0	\$10.26
Quarter 1, 2009	Use	\$2,346.66	0	\$21.39

8. Car Wash's failure to file correct sales tax returns and use tax returns was neither willful nor due to neglect, evasion, or fraud.

### **Conclusions of Law**

We have jurisdiction over appeals of the Director's final decisions.<sup>2</sup> Our duty in a tax case is not merely to review the Director's decision, but to find facts and determine the taxpayer's lawful tax liability for the period or transaction at issue by applying existing law to those facts.<sup>3</sup> Exemptions from tax "are to be strictly construed against the taxpayer, and any

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<sup>1</sup> These are the assessments Car Wash appealed in its complaint. If there are other assessments from this audit, they are not in dispute and we have not listed them.

<sup>2</sup> Section 621.050.1. Statutory references are to RSMo. 2000, unless otherwise noted.

<sup>3</sup> *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

doubt resolved in favor of application of the tax.”<sup>4</sup> Car Wash has the burden to prove it is not liable for the Director’s assessments.<sup>5</sup>

During the audit, the Director requested, but Car Wash failed to provide, direct evidence regarding the eligibility of its transactions for sales tax and use tax exemptions. This direct evidence was requested in the form of copies of leasing arrangements, proof for out-of-state sales, and sales tax exemption certificates from in-state customers. At the hearing, Car Wash again failed to provide such direct evidence. Instead, it provided five exhibits, admitted into evidence as Petitioner’s Exhibits 1, 3, 4, 6, and 7.

Petitioner’s Exhibit 1 is a summary of use tax collection, by quarter, prepared jointly by Guenther and Lynn Merkins. Merkins was Car Wash’s accountant and was neither present, nor testified, at the hearing. Exhibit 1 contains what Car Wash alleges it owes in use tax for the quarters relevant to this decision.

Petitioner’s Exhibit 3 is an internal report allegedly containing all of Car Wash’s invoice information. This report was prepared by Merkins and was used as the basis to create the summarized information contained in Exhibit 1.

Petitioner’s Exhibit 4 is a copy of an invoice, dated March 30, 2006, sent to a retail car wash for services rendered, and materials sold, by Car Wash. This invoice, from Quarter 1, 2006, is irrelevant to the periods at issue in this decision. Furthermore, even if it had been relevant, a single invoice is insufficient for us to determine Car Wash’s entire sales tax liability for a month or use tax liability for a quarter.

Petitioner’s Exhibit 6 is another summary of alleged use tax liability, by quarter, prepared by Guenther. Petitioner’s Exhibit 7 is a summary of the same transactions in Exhibit 6.

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<sup>4</sup> *Southwestern Bell Telephone Co. v. Dir. of Revenue*, 182 S.W.3d 226, 228 (Mo. banc 2005).

<sup>5</sup> Section 621.050.2.

Car Wash failed to present direct evidence regarding its eligibility for sales tax and use tax exemptions. Instead, it presented one irrelevant invoice and duplicative hearsay evidence. Consequently, Car Wash failed to meet its burden to prove that it is not liable for the Director's assessments. Accordingly, we find Car Wash is liable for the assessments made by the Director on May 21, 2010.

### **Summary**

Car Wash is liable for sales tax and use tax as assessed by the Director for Quarter 3, 2006; Quarter 4, 2006; Quarter 2, 2007; Quarter 3, 2007; Quarter 2, 2008; Quarter 3, 2008; September 2008; and Quarter 1, 2009, plus statutory interest and additions.

SO ORDERED on June 18, 2013.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner